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## **Brazil**

## **Biotechnology**

## **Update of Biotech Issues in Brazil**

### **2001**

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#### **Report Highlights:**

**Commercial production and trade of genetically modified organisms (GMOs) in Brazil remains prohibited pending a final decision by the Brazilian Federal Court whether the Federal Government has the authority to approve the commercial release of these products. The Government of Brazil issued a Decree establishing a labeling requirement and tolerance limits for packaged food products containing GMOs to be effective December 31, 2001. However, the issue is not completely resolved because the National Congress continues to debate more stringent labeling regulations.**

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Includes PSD changes: No  
Includes Trade Matrix: No  
Unscheduled Report  
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## EXECUTIVE SUMMARY

Commercial production and trade of genetically modified organisms (GMOs) in Brazil remains prohibited, pending a final decision by the Regional Federal Court (TRF) on the Round Up Ready Soybean (RRS) court case. This legal, or "white" moratorium, has placed a hold on the sale of RRS seeds for the 2001/02 soybean crop (planted October/November of 2001, and harvested March/April 2002). Nationwide controversy on the issue continues among the Government's executive, judiciary, and legislative branches, the scientific community, and consumer groups, notably the Consumer Protection Institute (IDEC) and Greenpeace. The federal government issued Decree Number 3,871, establishing a labeling requirement and tolerance limits for packaged food products containing genetically modified organisms, which will enter into force on December 31, 2001. In addition to this court battle, the National Congress is expected to release, by mid-November, a final report on the issue, which combines 18 draft bills that have been introduced during the past four years.

*Note: This report updates GAIN Report Number BR 1601, dated January 17, 2001.*

## THE COURT BATTLE OVER RRS

The Provisional Measure (MP) Number 2,137 issued by the President of Brazil, and published on December 28, 2000 in Brazil's Federal Register (Diario Oficial), took effect immediately, but the MP has not been approved by the National Congress. The MP 2,137 redefined the role of the National Technical Commission on Biosafety (CTNBio) by providing the Commission with the authority to evaluate and authorize the production and sale of GMOs in Brazil. MP 2,137 was the federal government's response to the rule issued by the Regional Federal Court (TRF) in Brasilia, which upheld the decision of federal judge Prudente declaring unconstitutional clause XIV of Article Two of Law 1,752/95 during Monsanto's appeal of its court case. As result, Prudente's decision established that CTNBio did not have the authority to waive environmental impact studies and reports (EIA-RIMA) for RRS seeds.

The Brazilian Consumer Protection Institute (IDEC) and Greenpeace of Brazil filed an injunction against MP 2,137 and obtained a favorable ruling issued by the 14<sup>th</sup> Circuit of the Regional Federal Court (TRF). This rule is still in place, but a surprising rule issued by Judge Joao B. Moreira, of the 5<sup>th</sup> Circuit of the TRF, changed provisions of the previous rule by authorizing CTNBio to evaluate the biosafety of cultivars that receive the gene, resistant to insects, which is derived from the bacteria *Bacillus thuringiensis* (Bt). However, Judge Moreira maintained the section of the rule which prohibited sale of genetically modified seeds resistant to agricultural chemicals (pesticides/herbicides) that were not covered by a special temporary registration (RET) issued by the Ministry of Agriculture, Livestock, and Food Supply (MAPA). The RET is based on Decree Number 98,816/90. Although a RET for RRS seeds from MAPA is required, the other two Ministries involved (Health and Environment) have not yet ruled on RRS seeds for toxicity and environmental impact.

The important point in Judge's Moreira decision in favor of CTNBio is that he was the first judge to use MP 2,137/00 as the basis to support his decision. Judge Moreira's opinion could support the Government's approval of RRS seeds for commercial sales. A final ruling on this case is expected by mid December 2001.

## **NEW DIRECTIVE ON GMO FOOD LABELING**

Brazilian President Cardoso signed Decree Number 3,871 on July 18, 2001 (published on July 19, 2001 in Brazil's Federal Register (Diario Oficial) which established a four-percent tolerance limit in packaged food products containing genetically modified organisms. This Decree applies to all genetically modified packaged food products that have received final technical approval from CTNBio. This Decree also creates an Inter-ministerial Commission to analyze and review the provisions of the Decree and the methodology to detect the presence of genetically modified organisms. The Decree does not enter into force until December 31, 2001.

The Public Prosecution Service (MP) and the Brazilian Institute of Consumer Defense (IDEC) filed an injunction against Decree 3,781/01 alleging that the four-percent tolerance is contrary to the Brazilian Consumer Code (law Number 8,078/90), principally Article 6, item III, of such Law. Judge Isa P. Costa of the 13<sup>th</sup> Circuit of the Federal Justice Court in Brasilia denied the request for an injunction requested by the MP and IDEC.

However, the labeling controversy is far from being resolved because the Brazilian Congress continues to debate the issue. This may explain why the Brazilian government has not notified the WTO regarding Decree Number 3,781/01. The other explanation is that, since the regulation does not enter into force until the end of the year, the government has time to notify the WTO before December 31, 2001.

## **THE CONGRESSIONAL DEBATE ON GENETICALLY MODIFIED ORGANISMS**

The Brazilian House of Representatives in the National Congress has been debating the GMO issue in Brazil for the past 4 years without reaching a consensus. However, the Special Commission of the House on GMOs is expected to release by mid-November 2001, a final report

based on public hearings conducted by the Commission.

This report is based on the draft bill Number 2,905 of 1997, the first law to be introduced in the House about the issue, which establishes conditions for marketing GMOs in Brazil. The final report is expected to include 18 other draft bills related to the issue that were introduced in the House during these past four years.

There is another draft of Legislative Decree Number 1,089 of 2001 which is being considered separately by members of the House to suspend the provisions of Decree 3,871/01 issued by President Cardoso on food labeling.

In addition to the House, there are three other draft bills in the Senate: a) PLS 118/99 (mandatory labeling of GMO products), b) PLS216/99 (which prohibits production and sale of GMOs in Brazil for five years, and c) PLS 271/00 (which suspends production and sale of GMOs in Brazil until 2004).

Finally, there are two Constitutional Amendments in the National Congress related to GMOs: a) 159/99 (by which farms that produce GMO crops can be expropriated for purposes of Agrarian Reform), and 237/00 (which authorizes the Federal Government to regulate GMO products, thus preventing Brazilian states from creating their own laws and regulations).

Because of the Presidential elections in 2002, it is uncertain whether these bills will actually become laws in the National Congress, because the GMO issue in Brazil is not only emotional, but increasingly ideological. For example, the Landless Movement in Brazil (MST) has destroyed research fields of RRS because of their antagonism against multinational companies. These groups also allege that biotechnology will be damaging to small farmers because of increased dependence on this technology and the high cost of GMO seed.

## **PUBLIC PERCEPTION**

At the request of Greenpeace of Brazil, the most important opinion survey institute in Brazil (IBOPE), conducted a national survey, from July 18-24, 2001, about the public acceptance of GMOs in Brazil. The results of the survey indicate that 74 percent of the Brazilian population prefers conventional food products rather than those produced with GMOs because they don't have sufficient information about the possible health risks and environmental impact. Also, 67 percent of the people interviewed believe that planting of GMO crops should be prohibited.

According to the survey, 31 percent of the people interviewed knew about GMOS, and 91 percent defended specific labeling for GMOs. People living in the South and Southeast regions of Brazil were more aware of GMOs than those Brazilians living in the Northeast, Center-West and Northern regions of the country.

Greenpeace is using the results of this survey to increase public awareness of its campaign of "Brazil free of GMOs". The Brazilian biotech companies recently founded the "Biotechnology Information Council" (CIB, in Portuguese). The purpose of CIB is to produce and release reliable scientific information on GMOs to the general public.

There is no reliable survey of Brazilian farmers' perceptions of GMOs. However, most leaders of farm organizations support the approval of GMOs in Brazil to remain competitive with Argentine and American farmers. Trade analysts estimate 2.0 million hectares will be planted with GMO crops during the 2001/02 marketing year, mostly in the South and Southeast regions of the country.

Most traders of agricultural products in Brazil advocate the planting of both GMOs and non-GMOs in Brazil. According to some trade analysts, there is a difference in price of US\$20 per metric ton in the world market in favor of Brazilian soybean meal compared its Argentine counterpart. Most Brazilian traders, however, are against "Identity Preservation" (IP) because this would increase the cost of Brazilian beans and could erode Brazil's competitive position in the world market. Currently, the Ministry of Agriculture, Livestock, and Food Supply (MAPA) declares that planting of GMOs is prohibited in Brazil, and this information has satisfied import requirements in the European Union. However, traders have been alerted they must meet more stringent certification standards in the European and Chinese markets in 2002.

The greater interest in traceability has increased investments in inspection and certification laboratories to test for Non-GMO products. One of the companies has increased the frequency of DNA samples from soybean shipments to 130 samples per month because of increased traces of GMOs produced in Southern Brazil.

## **ANNEX**

### **Translation of Decree Number 3,871 (labeling)**

Decree Number 3,871 of July 18, 2001

Published in the Diario Oficial on July 19, 2001

Regulates the labeling of packaged foods that have been or are produced with genetically modified organisms, and provides other measures.

The President of the Republic, under the authority conferred upon him by article 84, item IV, of the Constitution.

#### **DECREES:**

Article One. Packaged foods for human consumption, that contain or will be produced with genetically modified organisms, with a content above a 4 (four) percent limit for the product, must be labeled to provide this information, without prejudice, to comply with the regulations on biosafety and the regulations applied to foods in general or other supplemental rules of the respective regulatory and inspection agencies.

Paragraph One. With reference to Article One, the labeling must show one of the following statements: "(type of product) genetically modified" or "contains (type of ingredient) genetically

modified".

Paragraph Two. The information on the label must be in the Portuguese language, with characters of size and format that make them clear and readily visible.

Paragraph Three. For the purpose of this Decree, the limit foreseen in Article One establishes the tolerance level for the unintentional presence of genetically modified organisms, in terms of percentage by weight or volume, in one lot of the same product obtained by conventional techniques.

Paragraph Four. For foods consisting of more than one ingredient, the levels of tolerance established will be applied to each one of the ingredients considered separately in the composition of the food.

Article Two. This Decree applies to all products genetically modified that have received final technical approval from the National Technical Commission on Biosafety (CTNBio), relative to the safety of the genetically modified organism, for commercial purposes, as well as the respective authorization for sale by the responsible agency.

Article Three. Creation of Interministerial Commission with the legal responsibility to propose the review, complementing and updating the dispositions of this Decree, as well as the methodology to detect the presence of genetically modified organisms, taking into consideration the most recent scientific and technological procedures.

Paragraph One. The Commission will be composed of representatives of the Ministries of Justice, Agriculture and Food Supply, Development, Industry and Foreign Trade, Health, and Science and Technology, nominated by the respective heads of each Ministry, and approved by the Minister of Science and Technology.

Paragraph Two. The Presidency and the Secretariat of the Commission will be determined by a rotation system among the Ministries named above for a period of 12 (twelve) months, beginning with the Ministry of Justice, through the Department of Consumer Protection and Defense (DPDC), Office of Economic Law (SDE).

Paragraph Three. Participation in the Commission, as collaborators, will include professionals and representatives of the public agencies and entities whose functions are related to the issues of importance to them.

Paragraph Four. The Commission will adopt a work plan that allows the participation of the public through public consultations or other measures that take into consideration the main interest groups involved.

Paragraph Five. The Commission will be installed within a maximum of 60 (sixty) days, beginning on the date of the publication of this Decree.

Article Four. The Ministries represented in the Commission, and in their respective areas of influence, will be responsible for the review and control of information furnished by consumers.

Article Five. This Decree will enter into force on December 31, 2001.

Brasilia, July 18, 2001; 180<sup>th</sup> of the Independence and 113<sup>th</sup> of the Republic.

Signed:

FERNANDO HENRIQUE CARDOSO (President)

Jose Gregori (Minister of Justice)

Marcus Vinicius Pratini de Moraes (Minister of Agriculture and Food Supply)

Jose Serra (Minister of Health)

Benjamim Benzaquen Sicsu (Acting Minister of the Development, Industry and Foreign Trade)

Ronaldo Mota Sardenberg (Minister of Science and Technology)

### **Abbreviations/Glossary**

ABIA - Brazilian Association of Food Industries, based in Sao Paulo.

ANVISA - Agency for Sanitary Surveillance, Ministry of Health.

CIB - Conselho de Informacoes de Biotecnologia (Biotechnology Information Council). Non-profit private organization formed by major multinational biotech companies, Brazilian Association of Seed Producers, Brazilian cooperatives, and the Rural Brazilian Society.

CTNBio - National Technical Commission on Biosafety, created by Law 8,974 of January 5, 1995 which provides the legal framework and sets the standards and means of production, importation, manipulation, transportation, marketing, and consumption of genetically modified organisms. Presidential Decree Number 1,752 of December 20, 1995 also provides the regulatory framework under which CTNBio operates. In addition, Provisional Measure 2,137 of December 28, 2000 added and altered some clauses of Law 8,974/95 to clearly define the role of CTNBIO, which is under the authority of the Ministry of Science and Technology.

DJ - Decisao Judicial. Sentence. Final Decision Rule.

DO - Diario Oficial. Official Gazette (Brazil's equivalent of the United States Federal Register). Any law or regulation to become effective in Brazil must be published in the Diario Oficial.

EC - Emenda Constitucional (Constitutional Amendment).

EIA-RIMA - Environmental Impact Study and Report of the Impact on the Environment.

GMOs - Genetically Modified Organisms

IDEC - Brazilian Consumer Protection Institute, based in Sao Paulo.

IP - Preservacao de Identidade (Identity Preservation)

Liminar - Injunction. Temporary Restraining Order. Writ.

MP - Medida Provisoria. Provisional Measure. It is an act by the President, under the powers and privileges granted to him by the Brazilian Constitution . It has the power of a law, until Congress gives final approval, and then, becomes a law.

MPF - Ministerio Publico Federal - Public Prosecution Service. Independent federal body with the primary role of providing citizens with a secure means to fight in the courts when the law is violated, or there is abuse of authority.

MAPA - Ministry of Agriculture, Livestock, and Food Supply

MCT - Ministry of Science and Technology

MMA - Ministry of the Environment

MST - Movimento dos Trabalhadores Sem-Terra (Landless Workers Movement)

Parecer - Opinion. Judgment. View. Legal Opinion

PC - Parecer Conclusivo - Conclusive View.

Portaria - Directive (Administrative rule)

Procurador da Republica - Attorney General

Promotor - Prosecuting Attorney; Public Prosecutor

RET - Special Temporary Registration. RET is issued by the Ministry of Agriculture, Livestock, and Food Supply (MAPA) for agricultural chemicals (pesticides/herbicide), based on Decree Number 98,816/90. A company (Brazilian or foreign) that needs to register a pesticide or herbicide in Brazil files a request with the MAPA, which sends the request to the Ministry of Health (for their opinion on toxicity), and to the Ministry of Environment (for their opinion on environmental impact). The request, then returns to MAPA for final approval and issuance of the final registry number.

TFR - Federal Court of Appeals

TRF - Regional Federal Court

STF - Supreme Court

STJ - Supreme Court of Justice